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(FIRM STATE BAR NO. 0003200)

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(STATE BAR NUMBER 003813)

8 IN THE SUPREME COURT OF THE STATE OF ARIZONA
9 _____

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11 In the Matter of

Supreme Court No. R-05-0028

12 PETITION TO AMEND THE RULE 38 OF
13 THE RULES OF THE SUPREME COURT.

MARICOPA COUNTY ATTORNEY'S
COMMENT IN OPPOSITION TO
PETITION TO AMEND RULE 38 OF
THE RULES OF THE SUPREME
COURT

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16 The Maricopa County Attorney hereby comments in opposition to the Petition to Amend Rule 38
17 of the Rules of the Supreme Court.

18 Respectfully submitted this 22 day of May, 2006.

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20 ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

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22 BY: 

23 PHILIP J. MACDONNELL
24 CHIEF DEPUTY
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MEMORANDUM OF POINTS AND AUTHORITIES

The Pima County Public Defender has proposed an amendment to Rule 38(c)(1)(B),(C) of the Rules of the Supreme Court. This Rule has been renumbered since the Petition to Amend was filed and now appears as Rule 38(d)(3)(A)(iii). The proposed amendment would allow law students to represent defendants at their initial appearances on felony charges without the presence of a supervising responsible attorney. The reason cited for this change is a lack of resources in the Pima County Public Defender's Office. The argument in support of this Petition is that law students would be available to "argue for reduced bond". Neither the stated reason nor the argument in support of it are sufficient to support changing this well established rule, which has import beyond just Pima County.

Current Rule 38(d) requires the personal presence of a supervising lawyer in all felony proceedings handled by a law student. The Rule also states that the supervising lawyer "shall be fully responsible for the manner in which they [the proceedings] are conducted." Such oversight is required in felony matters due to their very serious nature.

The proposed rule change makes no distinction among felonies. Thus, the law student could be representing a defendant on anything from a low level property crime all the way up to first degree murder. The Rule now allows a law student to proceed without supervision in a civil matter, where a monetary loss would be the most severe punishment, or in a misdemeanor case, where the loss of personal liberty would be minimal. But a felony prosecution has potential penalties that include the loss of liberty for extremely long periods and involves contact with often dangerous persons.

It is incumbent on all participants in the system to ensure a just resolution of these cases. That includes a resolution free of legal defects or deficiencies. An untrained and inexperienced law student may have the highest integrity and the best of intentions, but one ill advised instruction or opinion to a defendant could have lasting repercussions to the case, even to the point of jeopardizing a later

1 conviction.

2 Take, for example, a law student who tells a defendant at the initial appearance that the evidence
3 against the defendant looks weak and that the defendant could probably win at trial. Any future defense
4 lawyer trying to explain the problems of the case, or trying to convince the defendant that a plea
5 agreement would be in his best interest will be contending against the erroneous advise given by an
6 unsupervised law student. Had a supervising lawyer been present, he or she would have been able to
7 tell the law student and the defendant that the strengths or weaknesses of the case cannot be gauged at
8 the initial appearance because the discovery process has not yet commenced.
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10 There are, in addition, risks in allowing an unsupervised law student to represent a hardened
11 criminal. Some students might be tempted to convey messages or contraband. Other scenarios can be
12 imagined where unsupervised representation could endanger the student or another person, later damage
13 the case or confuse the defendant. The proposed amendment is risky and should be rejected.
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15 Respectfully submitted this 22 day of May, 2006.

16 ANDREW P. THOMAS
17 MARICOPA COUNTY ATTORNEY

18
19 BY:


20 PHILIP J. MACDONNELL
21 CHIEF DEPUTY
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24 Copies of the forgoing hand delivered
this 22 day of May, 2006 to:

25 Clerk of the Court
26 Arizona Supreme Court
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